

ENTERED

January 29, 2018

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEVEN CHARLES RATHBONE,

Plaintiff,

VS.

THE BANK OF NEW YORK MELLON,

Defendant.

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CIVIL ACTION NO. 4:17-CV-1828

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is the Report and Recommendation of U.S. Magistrate Judge Dena Hanovice Palermo. (Doc. No. 15.) The Sworn Motion to Show Authority and For Entry of Show Cause Order filed by Defendant Bank of New York Mellon (Doc. No. 6) prompted this Court's referral of this action to Judge Palermo (Doc. No. 11), and it was followed by Defendant's Motion to Dismiss (Doc. No. 13). On January 9, 2018, Judge Palermo issued the Report and Recommendation on Defendant's motions, recommending that the Estate of William M. Rathbone's claims should be dismissed without prejudice and that Steven Rathbone's individual claims should be dismissed with prejudice. (Doc. No. 15 at 9.) The time for filing objections has passed, and no objections were filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error. Finding none, the Court adopts the Report and Recommendation in its entirety. Accordingly, Defendant's Motion to Dismiss is **GRANTED**. The Estate of William M. Rathbone's claims are **DISMISSED WITHOUT PREJUDICE**, and Steven Rathbone's individual claims are **DISMISSED WITH PREJUDICE**.

There remains the issue of attorney's fees. In its Answer, Defendant asked this Court to award attorney's fees against Plaintiff under Rule 11, arguing that this action is groundless and brought in bad faith, for harassment, or for another improper purpose. (Doc. No. 7 at 8–9.) Though styled a counterclaim, this is effectively a motion for sanctions under Rule 11. Such motions are to be made separately from any other motion or pleading. Fed. R. Civ. P. 11(c)(2). Moreover, Defendant has not adequately substantiated its assertion that Plaintiff has proceeded in bad faith or intended to harass Defendant. Accordingly, Defendant's request for attorney's fees is **DENIED**.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 29th day of January, 2018.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", written over a horizontal line.

HON. KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE